

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES DEL VALLE,

Defendant and Appellant.

2d Crim. No. B151537
(Super. Ct. No. F310726)
(San Luis Obispo County)

ORDER MODIFYING OPINION AND
DENYING PETITION FOR REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 15, 2002, be modified as follows:

1. On page 2, the first paragraph is modified to read as follows:

Section 2962 enumerates the criteria that must be met to qualify a prisoner as an MDO. Among other factors, the statute requires a showing ". . . that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day." (*Id.*, subd. (d)(1).) Once a prisoner has been certified as an MDO, inpatient treatment is generally required as a condition of parole. If, however, the DMH certifies to the BPT that the parolee can be safely and effectively treated on an outpatient basis, the DMH is permitted to place the parolee in an outpatient program. (§ 2964, subd. (a).)

2. The last full paragraph commencing at the bottom of page 4 and ending on page 5 is modified to read as follows:

Section 2962, subdivision (d)(1) mandates that a prisoner receive 90 days of treatment for his mental disorder. To determine the type of treatment required, we look to the provisions of the statute governing mental health treatment for parolees.

3. On page 5, the first full paragraph is modified to read as follows:

Section 2964 provides that a prisoner who has been paroled is required to undergo inpatient treatment. A parolee may only receive outpatient treatment if the DMH certifies to the BPT that "there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis, in which case the Board of Prison Terms shall permit the State Department of Mental Health to place the parolee in an outpatient treatment program specified by the State Department of Mental Health." (§ *Id.*, subd. (a).) The cost of a parolee's inpatient or outpatient treatment is born by the state while the person is under the jurisdiction of the CDC or DMH. (§ 2976, subd. (a).) After a year of outpatient treatment, the trial court determines whether the parolee should continue in treatment, be discharged or committed to an inpatient facility. (§ 2972.1, subd. (a).)

4. On page 5, the second full paragraph is modified to read as follows:

Under the statutes, a parolee's mental health treatment is planned, approved and implemented through the CDC by the DMH. There is no suggestion that a parolee may participate in treatment that is outside the auspices of the DMH. If a parolee is required to undergo inpatient treatment, the same standard should apply to an individual who is in custody and is being evaluated for MDO status. It is consistent with the statutory scheme that a prisoner must receive 90 days of inpatient treatment before he can qualify as an MDO. We reject the People's contention that private treatment is acceptable to fulfill the 90-day requirement. We need not address their argument concerning the trial court's findings or the sufficiency of the evidence."

The People's petition for a rehearing is denied.

There is no change in the judgment.